

APPENDIX

Supreme Court, U. S.
FILED

DEC 6 1976

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-6933

NATHANIEL BROWN

Petitioner,

—v.—

OHIO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

PETITION FOR CERTIORARI FILED JUNE 16, 1976

CERTIORARI GRANTED OCTOBER 18, 1976

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-6933

NATHANIEL BROWN

—v.—

Petitioner,

OHIO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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IN THE COURT OF COMMON PLEAS
STATE OF OHIO
CUYAHOGA COUNTY

Case No: CR 12062

STATE OF OHIO

vs.

NATHANIEL BROWN, DEFENDANT

INDICTMENT FOR: Auto Stealing w/c OMVWOC

January 15, 1974:

Transcript: Cleveland East Muni Court, Bail \$1,000.
Surety: Peerless/V. Shury, Charge: Auto Theft.

February 5, 1974:

Indictment: Auto stealing w/ct operating a motor
vehicle without owner's consent.

February 19, 1974:

BFC

February 26, 1974:

Arraignment.

February 26, 1974:

BFC vacated.

March 1, 1974:

Motion for a Bill of Particulars filed.

March 13, 1974:

Bill of Particulars filed.

March 18, 1974:

Changes plea to guilty of the 1st count of the indictment. ORP, count 2 nolle. RTP, OBC.

April 12, 1974:

Motion to withdraw plea filed.

June 10, 1974:

Brief in opposition to motion to change plea and to dismiss indictment filed.

June 24, 1974:

Reply to Brief opposing motion to change plea and dismiss indictment filed.

November 26, 1974:

Sentenced to 6 months in County Jail and the sentence is suspended, 1 yr. prob. and costs.

December 10, 1974:

Notice of Appeal filed.

December 10, 1974:

Notice of Appeal and copy of Docket sheet transferred to Court of Appeals.

RECORD ON APPEAL—January 20, 1974:

3-3-76 Nunc-Pro-Tunc 9-20-74. Deft's motion in re: Double Jeopardy overruled after hearing and briefs.

DEFT'S. EXH. A

WILLOUGHBY MUNICIPAL COURT

Case No. S-13799

COMPLAINT AND SUMMONS

CITY OF WICKLIFFE

vs.

NATHANIEL H. BROWN

The undersigned complainant, being duly sworn, states that on or about December 8, 1973, within Lake Wickliffe, Ohio, Nathaniel H. Brown did unlawfully and purposely take, drive or operate a certain motor vehicle to wit; a 1965 Chevrolet 2ds Serial 123477N159590 without the consent of the owner one Gloria Ingram 1427 E. 135th E. Cleveland, Ohio, contrary to and in violation of Section 4549.04 of the revised code of Ohio.

The complaint is based on Investigation of the Wickliffe Police Department.

/s/ Hal Buckly #15

Sworn to and signed in my presence this 8th day of December, 1973 at Wickliffe, Ohio.

/s/ Robert [Illegible]
Deputy Clerk

[Summons and Certification omitted in printing]

S-13799

STATE

vs.

NATHANIEL BROWN

Defendant Appeared, Constitutional
Rights and Pleas Explained.

Dec. 10, 1973

Plea; Guilty — Not Guilty — No Contest —
Finding: Guilty — Not Guilty —

/s/ David N. Patterson
DAVID N. PATTERSON
Judge

Date: Dec. 10, 1973

Fine: \$100.00

Costs: \$10.00

Sentence: 30 days in jail

Suspension conditioned on:

Time in jail to run concurrently with case No. S-13801

/s/ David N. Patterson
Acting Judge

[Certification omitted in printing]

IN THE EAST CLEVELAND MUNICIPAL COURT

COMPLAINT

THE STATE OF OHIO)
CUYAHOGA COUNTY) ss.
CITY OF EAST CLEVELAND)

BEFORE ME, [Illegible] Clerk of the East Cleveland Municipal Court, personally came Milton Jennrich who being duly sworn according to law, deposes and says, that on or about the 29th day of November A.D., 1973, at the City of East Cleveland, County of Cuyahoga and State of Ohio, one Nathaniel Brown, Jr. did unlawfully and intentionally take, steal, and drive away a 1967 Chevrolet automobile bearing Serial number 123477 N 1595 90, the property of Gloria Ingram, from the vicinity of the Doan Avenue, CTS parking lot, located in East Cleveland, Ohio.

I Charmaine Luhs, Deputy Clerk of The East Cleveland Municipal Court do hereby certify that the foregoing is a true copy filed in the case of *The State of Ohio vs. Nathaniel Brown*.

/s/ Charmaine Luhs
Deputy Clerk

To wit: Section 4549.04 O.R.C. contrary to the form of the Statutes in such cases made and provided, and against the peace and dignity of the State of Ohio. Further deponent sayeth not.

/s/ Milton Jennrich

Sworn to and subscribed before me, this 11th day of December A.D., 1973.

/s/ Esther W. Patch
Clerk of the
East Cleveland
Municipal Court

IN THE EAST CLEVELAND MUNICIPAL COURT

Case No. 158984

Charge: Section 4549.04RC

THE STATE OF OHIO
CUYAHOGA COUNTY
CITY OF EAST CLEVELAND

vs.

NATHANIEL BROWN JR.

Defendant arrested on a warrant founded on an affidavit, a certified copy of which is herewith attached, charging Nathaniel Brown Jr. with Auto Theft. Said affidavit was made before Esther W. Patch, Clerk of this Court, by Milton Jennrich, on the 11th day of December A.D., 1973.

Warrant issued to Chief of Police of said City and returned on the 8th day of January A.D., 1974, by Edward Wintersteller of said City of East Cleveland, with the body of the defendant.

The defendant was duly arraigned before James M. De Vinne, Judge of said Court, on the 11th day of January A.D., 1974, after announcement by the Court of the charge and of said defendant's rights and the reading of said affidavit, and entered no plea.

The preliminary examination was (held) before James M. De Vinne, Judge of said Court, on the 11th day of January A.D., 1974. Probable cause was found and it was ordered by the Court that said defendant furnish bail for his personal appearance at the next term of the Court of Common Pleas of Cuyahoga County on the first day of the term thereof, in the sum of One Thousand dollars cash or surety, or in default thereof to stand committed to County Jail. Surety bond power #483822 given on the 8th day of January, 1974 (copy attached) and defendant was released.

STATE OF OHIO, CITY OF EAST CLEVELAND, SS.

I, Ester W. Patch, Clerk of the East Cleveland Municipal Court, do hereby certify that the foregoing is a true transcript of the proceedings had before the said Court in said cause as fully as the same appears on record.

Given under my hand and the seal of said Court, this 11th day of January, A.D., 1974.

/s/ Esther W. Patch
Clerk of the
East Cleveland
Municipal Court

By /s/ Charmaine Luhs
Deputy Clerk

[Received for Filing Jan. 15, 1974, by E. J. Masgay,
Clerk, N-M-19, 558E128]

INDICTMENT FOR AUTOMOBILE STEALING R.C. 4549.04 (A)

w/ct OPERATING MOTOR VEHICLE WITHOUT
OWNER'S CONSENT R.C. 4549.04 (D)

THE STATE OF OHIO,)
) ss.
CUYAHOGA COUNTY)

Of the term of JANUARY In the year of our Lord
one thousand nine hundred and SEVENTY-FOUR.

The Jurors of the Grand Jury of the State of Ohio,
within and for the body of the County aforesaid, on their
oaths, IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF OHIO,

Do Find and Present, That Nathaniel Brown on or
about the 29th day of November 1973, at the County
aforesaid, unlawfully did steal a Chevrolet motor vehicle,
the property of Gloria Ingram contrary to the form of
the statute in such case made and provided, and against
the peace and dignity of the State of Ohio.

/s/ John T. Corrigan
Prosecuting Attorney

INDICTMENT FOR OPERATING MOTOR VEHICLE WITHOUT
OWNER'S CONSENT R.C. 4549.04 (D)

THE STATE OF OHIO,)
) ss.
CUYAHOGA COUNTY)

Of the term of JANUARY In the year of our Lord
one thousand nine hundred and SEVENTY-FOUR.

The Jurors of the Grand Jury of the State of Ohio,
within and for the body of the County aforesaid, on their
oaths, IN THE NAME AND BY THE AUTHORITY
OF THE STATE OF OHIO,

Do Find and Present, That Nathaniel Brown on or
about the 29th day of November 1973, at the County
aforesaid, unlawfully did purposely take, operate or keep
a Chevrolet motor vehicle without the consent of Gloria
Ingram, the owner thereof contrary to the form of the
statute in such case made and provided, and against the
peace and dignity of the State of Ohio.

/s/ John T. Corrigan
Prosecuting Attorney

IN THE COURT OF COMMON PLEAS
CRIMINAL BRANCH

Case No. CR 12062

Judge Frank Gorman

STATE OF OHIO)
) ss.
CUYAHOGA COUNTY)

STATE OF OHIO, PLAINTIFF

—vs—

NATHANIEL BROWN, DEFENDANT

BILL OF PARTICULARS

Responding to the request of the Defendant, Nathaniel Brown, for a Bill of Particulars, the Prosecuting Attorney says that the State of Ohio will prove on the trial of the above entitled case, the following:

That on or about the 29th day of November, 1973, between the hours of 8:00 A.M. and 5:15 P.M., at the CTS Doan Parking Lot in the City of East Cleveland, the Defendant, Nathaniel Brown unlawfully did steal a Chevrolet motor vehicle, and take, drive or operate such vehicle without the consent of the owner, Gloria Ingram, the property of Gloria Ingram, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

The Prosecuting Attorney says further that under the law governing indictments and Bills of Particulars, the Prosecuting Attorney is not required to disclose through a Bill of Particulars, the other evidentiary mat-

ters requested in the Defendant's Motion for a Bill of Particulars.

/s/ John T. Corrigan
Prosecuting Attorney

SERVICE

A copy of the foregoing Bill of Particulars has been mailed this 13th day of March, 1974, to Robert O. Carson, Attorney for Defendant, 12601 Shady Oak Boulevard, Garfield Heights, Ohio 44125, and Robert Plautz, Attorney for Defendant, 1110 Euclid Avenue, Cleveland, Ohio 44115.

/s/ John T. Corrigan
Prosecuting Attorney

IN THE COURT OF COMMON PLEAS

January Term, 1974

To-Wit: March 18, 1974

No. CR-12062

INDICTMENT Auto Stealing w/ct OMVWOC

STATE OF OHIO,)
) ss.
 CUYAHOGA COUNTY)

STATE OF OHIO, PLAINTIFF

vs.

NATHANIEL BROWN, DEFENDANT

JOURNAL ENTRY

Now comes the Prosecuting Attorney on behalf of the State of Ohio and defendant Nathaniel Brown, in open court with his counsel present and was fully advised of his constitutional rights.

Thereupon said defendant retracts his plea of not guilty heretofore entered, and for plea to said indictment says he is guilty of Auto Stealing, RC. 4549.04 (A), as charged in the first count, upon the recommendation of the Prosecuting Attorney, the Court enters a nolle prosequi as to the second count, and the plea, on the recommendation of the Prosecuting Attorney is accepted by the court.

It is further ordered that this cause be referred to the Probation Department for pre-sentence investigation and report. Original bond continued.

Frank J. Gorman, Judge

va

3/22

/s/ F. J. Gorman
 Judge

[Received for Filing Mar. 27, 1974, E. J. Masgay, Clerk,
 By [Illegible], Dep.]

VOL 230 PG 122

IN THE COURT OF COMMON PLEAS

January Term, 1976

To-Wit: March 3, 1976

No. CR 12062

INDICTMENT Auto Stealing w/c

STATE OF OHIO,)
) ss.
CUYAHOGA COUNTY)

STATE OF OHIO, PLAINTIFF

vs.

NATHANIEL BROWN, DEFENDANT

JOURNAL ENTRY

NUNC-PRO-TUNC: as of and for September 20, 1974:

Defendant's Motion, In re: Double Jeopardy, is over-
ruled, after hearing and Briefs.

Judge Frank J. Gorman
rg 3/4/76

/s/ F. J. Gorman
Judge

[Received for Filing Mar. 9, 1976, E. J. Masgay, Clerk,
By [Illegible], Dep.]

VOL 270 PG 12

IN THE COURT OF COMMON PLEAS

September Term, 1974

To-Wit: November 26, 1974

No. CR 12062

INDICTMENT Auto Stealing w/c OMVWOC

[Received for Filing Dec. 18, 1974, E. J. Masgay, Clerk,
By [Illegible], Dept.]

STATE OF OHIO,)
) ss
CUYAHOGA COUNTY)

STATE OF OHIO, PLAINTIFF

vs.

NATHANIEL BROWN, DEFENDANT

JOURNAL ENTRY

The defendant herein having, on a former day of
court, plead guilty to Auto Stealing, RC 4549.04 as
charged in the first count was this day brought into court
with his counsel present.

Thereupon the court inquired of the said defendant if
he had anything to say why judgment should not be
pronounced against him; and having nothing but what
he had already said and showing no good and sufficient
cause why judgment should not be pronounced:

It is therefore ordered and adjudged by the court
that defendant Nathaniel Brown be imprisoned and con-
fined in the County Jail for six (6) months, according
to law and that he pay the cost of this prosecution for
which execution is awarded. Sentence suspended and
defendant placed on probation for one year under the

supervision of the Cuyahoga County Probation Department and pay costs.

Frank J. Gorman, Judge
rg 12/12/74

/s/ F. J. Gorman
Judge

VOL 243 PG 389

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Case No. CR 12062

001 FRANK J. GORMAN

[Court of Appeals, Filed Dec. 20, 1974, Emil J. Masgay,
Clerk of Courts, Cuyahoga County, Ohio]

STATE OF OHIO, PLAINTIFF-APPELLEE

—vs—

NATHANIEL BROWN, DEFENDANT-APPELLANT

NOTICE OF APPEAL

Now comes the defendant, Nathaniel Brown, and hereby gives notice of appeal to the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, from the sentence and judgment of the Common Pleas Court of Cuyahoga County in the above-entitled cause entered by said trial court by its sentence on the 26th day of November, 1974.

/s/ Robert Plautz
ROBERT PLAUTZ
1110 Euclid Avenue
Cleveland, Ohio 44115
861-1106

/s/ Robert Otto Carson/R.P.
ROBERT OTTO CARSON
9726 Park Heights
Garfield Heights, Ohio 44125
581-3737
Attorneys for Defendant-Appellant

34316

TO THE CLERK:

Please serve a copy of the foregoing Notice of Appeal on John T. Corrigan, Prosecuting Attorney, at 1560 East 21 Street, Cleveland, Ohio 44114.

/s/ Robert Plautz

/s/ Robert Otto Carson/R.P.
Attorneys for Defendant-Appellant

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

No. 34316

[FILE COPY]

Appeal from Common Pleas Court
(Criminal)

No. 12062

STATE OF OHIO, APPELLEE

—vs—

NATHANIEL BROWN, APPELLANT

Date—Dec. 11, 1975

JOURNAL ENTRY

This cause came on to be heard upon the pleadings and the transcript of the evidence and the record in the Common Pleas Court, and was argued by counsel for the parties; and upon consideration, the court finds no error prejudicial to the appellant and therefore the judgment of the Common Pleas Court is affirmed. Each assignment of error was reviewed and upon review the following disposition was made:

On November 29, 1973 an automobile was stolen from a parking lot in East Cleveland. On December 8, 1973, the appellant was arrested in Lake County, and charged with operating a motor vehicle without the owner's consent in violation of R.C. 4549.04(D) (repealed 1-1-74). Appellant plead guilty to the charge in Willoughby Municipal Court and was sentenced to 30 days in the county workhouse and fined \$100 and costs.

On February 5, 1974, the Cuyahoga County grand jury indicted appellant for auto theft (R.C. 4549.04(A),

repealed 1-1-74) and operating a motor vehicle without the owner's consent (R.C. 4549.04(D), repealed 1-1-74). On March 18, 1974 the appellant plead guilty to auto theft with the understanding that a motion to dismiss to raise the issue of double jeopardy could be filed. The second count of the indictment was nolle. It is undisputed that the automobile involved in the Lake County charge and the automobile involved in the Cuyahoga County charge is the same vehicle. Appellant's motion to dismiss was overruled.

The appellant appeals the overruling of his motion to dismiss assigning the following error:

"The trial court erred in overruling defendant's motion to withdraw plea and dismiss the indictment against him on the grounds of double jeopardy where the defendant had plead guilty and been convicted of operating a motor vehicle without the owner's consent in a municipal court under Ohio Rev. Code 4549.04(D) and the indictment charged automobile stealing under Ohio Rev. Code 4549.04(A) and both the affidavit in the municipal court and the indictment are based on the same act."

In *State of Ohio v. Best* (1975), 42 Ohio St. 2d 530, the Ohio Supreme Court stated that:

"2. To sustain a plea of former jeopardy it must appear:

- (1) That there was a former prosecution in the same state for the same offense;
- (2) that the same person was in jeopardy on the first prosecution;
- (3) that the parties are identical in the two prosecutions; and
- (4) that the particular offense, on the prosecution of which the jeopardy attached, was such an offense as to constitute a bar."

There is no dispute that the appellant was the person in jeopardy on the first prosecution or that the parties

are identical in the two prosecutions. The fact that the Lake County prosecution was brought in the name of the City of Wickliffe, and the Cuyahoga County prosecution was brought in the name of the State of Ohio does not defeat identity of parties. For purposes of double jeopardy, state and municipal governments are considered as a single sovereign. *Waller v. Florida* (1970), 397 U.S. 387, 25 L.Ed.2d 435; and *State of Ohio vs. Best, supra*. The real issue in this case is whether or not the Cuyahoga County prosecution is for the same offense that the appellant was convicted of in Lake County. The double jeopardy clause of the Fifth Amendment to the United States Constitution is a bar to a prosecution only if the defendant was previously prosecuted for the identical offense. *State v. Best, supra*.

Identity of offense consists of two components: (1) identity of the statutory offense and (2) identity of the operative act. A single act or transaction may violate more than one statutory provision. A prosecution for violation of one such provision will bar prosecutions under the other statutory provisions only if the other provisions proscribe the same offense. The Supreme Court of Ohio has stated the rule to be applied to determine if two distinct statutory provisions proscribe the same offense for purposes of double jeopardy:

"The applicable rule under the Fifth Amendment is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. A single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other. (*Blockburger v. United States*, 284 U.S. 299, and *Duvall v. State*, 11 Ohio St. 657, followed.)"

State of Ohio v. Best, supra.

In other words, two statutory offenses are the "same offense" for purposes of double jeopardy if proof of the elements of one of the offenses would support a conviction on the other offense or one offense is a lesser included offense of the other offense.

The appellant was charged in the Willoughby Municipal Court with violation of R.C. 4549.04(D), "No person shall purposely take, operate, or keep any motor vehicle without the consent of its owner." In Cuyahoga County the appellant was charged with violation of R.C. 4549.04(A), "No person shall steal any motor vehicle." Every element of the crime of operating a motor vehicle without the consent of the owner is also an element of the crime of auto theft. "The difference between the crime of stealing a motor vehicle, and operating a motor vehicle without the consent of the owner is that conviction for stealing requires proof of an intent on the part of the thief to *permanently* deprive the owner of possession." *State of Ohio v. Ikner* (C.A., Cuyahoga Cty., 1974, Case No. 33065), appeal to Ohio Supreme Court pending. Applying the rule laid down in *State of Ohio v. Best, supra.*, the crime of operating a motor vehicle without the consent of the owner is a lesser included offense of auto theft and both offenses are the same offense" for purposes of double jeopardy.

The appellee cites the case of *State v. Marcum* (C.A. Franklin Cty., 1969), 18 Ohio App.2d 190 to support their argument that operating a motor vehicle is not a lesser included offense of auto theft. The first syllabus of that case reads as follows:

- "1. The crime of operating a motor vehicle without the owner's consent . . . is not a lesser included offense of the crime of motor vehicle theft. . . ."

We do not find this case persuasive because the body of the opinion itself never discusses the issue of whether or not operating a motor vehicle without the owner's consent is a lesser included offense of auto theft. Also, the first paragraph of the court's opinion contradicts the courts' statement in the first syllabus.

"The jury returned a verdict of 'not guilty to auto theft. They did find him guilty of a lesser included offense—operating a motor vehicle without the owner's consent.'" *State v. Marcum, supra.* at 191.

Since R.C. 4549.04(D) is a lesser included offense of R.C. 4549.04(A) appellant has established that for purposes of double jeopardy the two prosecutions involve the same statutory offense. To prevail on his double jeopardy argument, however the appellant must also show that the two prosecutions are premised on the same operative act. This, appellant has failed to do. The charge in Cuyahoga County arose out of a theft which occurred on November 29th in East Cleveland. The charge in Lake County arose out of the actions of the appellant in operating the car in Lake County on December 8th. The two prosecutions are based on two separate acts of the appellant, one which occurred on November 29th and one which occurred on December 8th. Since appellant has not shown that both prosecutions are based on the same act or transaction, the second prosecution is not barred by the double jeopardy clause.

Appellant also argues that the doctrine of "merger" precludes the imposition of separate sentences for violations of R.C. 4549.04(A) and R.C. 4549.04(D). The doctrine of "merger" precludes separate sentences on multiple convictions when the convictions are based upon the same act. *State v. Botta* (1971), 27 Ohio St. 2d 196; *State v. Ikner, supra.* As noted above, the two convictions were based on two distinct acts and not the same act; therefore, the doctrine of merger is inapplicable.

Appellant's assignment of error is not well taken. The judgment of the Court of Common Pleas is affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute a mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

CORRIGAN, P. J.,

MANOS, J.,

SILBERT, J., CONCUR.
(Silbert, J., Retired Judge of the Eighth
Appellate District, Sitting by Assignment)

/s/ John V. Corrigan
JOHN V. CORRIGAN
Presiding Judge

For plaintiff appellee: John T. Corrigan

For defendant appellant: Robert Otto Carson

N.B. This entry is made pursuant to the third sentence of Rule 22D, Ohio Rules of Appellate Procedure. This is an announcement of decision, (see Rule 26). Ten (10) days from the date hereof this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.

COURT OF APPEALS OF OHIO
EIGHTH DISTRICT
CUYAHOGA COUNTY

[Emil J. Masgay, Clerk of Courts]

Court of Appeals No. 34316

Lower Court No. C.P. 12062-Cr.

Motion No. 31620

STATE OF OHIO, APPELLEE

vs.

NATHANIEL BROWN, APPELLANT

Date—December 31, 1975

JOURNAL ENTRY

Motion by appellant for reconsideration overruled. Exc.

[Received for Filing Dec. 31, 1975, Gerald R. Fuers.
By [Illegible], Dep.]

CORRIGAN, P. J.,

MANOS, J.,

SILBERT, J., CONCUR.
(Silbert, J., Retired Judge of the Eighth
Appellate District, Sitting by Assignment)

[Copies Mailed to Counsel for all Parties—Costs Taxed.]

/s/ John V. Corrigan
JOHN V. CORRIGAN
Presiding Judge

BOOK 61 PAGE 960

IN THE OHIO COURT OF APPEALS
CUYAHOGA COUNTY
EIGHTH DISTRICT

Case No. 34316

STATE OF OHIO, PLAINTIFF-APPELLEE

vs.

NATHANIEL BROWN, DEFENDANT-APPELLANT

Now comes the Defendant-appellant Nathaniel Brown and gives notice of appeal to the Supreme Court from the judgment entered in the Court of Appeals of Cuyahoga County, Eighth Appellate District, on the 31st day of December, 1975; that the case is one which did not originate in the Court of Appeals; and that the case involves a substantial constitutional question.

/s/ Robert Otto Carson
ROBERT OTTO CARSON
Attorney for Defendant-Appellant
9726 Park Heights
Garfield Hts., Ohio 44125
581-3737

PROOF OF SERVICE

I, Robert Otto Carson, certify that the above Notice of Appeal was served on John T. Corrigan, Prosecutor of Cuyahoga County, Ohio by mailing a copy to his office at 1560 East 21st Street, Cleveland, Ohio 44114, by ordinary U.S. mail, postage prepaid, this 27th day of January, 1976.

/s/ Robert Otto Carson
ROBERT OTTO CARSON
Attorney for Defendant-Appellant

THE SUPREME COURT OF THE STATE OF OHIO

1976 Term

To wit: March 19, 1976

No. 76-224

THE STATE OF OHIO,)
)
CITY OF COLUMBUS.)

THE STATE OF OHIO, APPELLEE

vs.

NATHANIEL BROWN, APPELLANT

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF
APPEALS FOR CUYAHOGA COUNTY

It is ordered by the Court that this motion is over-
ruled.

COSTS:

Motion Fee, \$20.00, paid by Robert Plautz.

THE SUPREME COURT OF OHIO

1976 Term

To wit: March 19, 1976

No. 76-224

THE STATE OF OHIO,)
)
 CITY OF COLUMBUS.)

THE STATE OF OHIO, APPELLEE

vs.

NATHANIEL BROWN, APPELLANT

APPEAL FROM THE COURT OF APPEALS FOR
 CUYAHOGA COUNTY

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

SUPREME COURT OF THE UNITED STATES

No. 75-6933

NATHANIEL BROWN, PETITIONER

v.

OHIO

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of Ohio.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 18, 1976